

State of Wisconsin

Plaintiff

Case No. 09F0

V.

Motion For A New Trial

Patrick M. Monchilovich

Case Code

Melissa Monchilovich  
2531 County Road E

Unclassified

Cumberland, Wisconsin 54829

Defendant's

---

**Motion For A New Trial**

Defendant's Patrick M. and Melissa Monchilovich, husband and wife as one in the eyes of the law moves this honorable court to grant a new trial per 805.15(1), 805.15(3), 806.07(1), 806.07(1)(b), 806.07(1)(c), 806.07(1)(h), 806.07(2), 805.16(4) of the Wis. Stats.

Defendant's have continued to exercise due diligence towards gathering evidence to prove their innocence. The newly discovered evidence presented in this Motion for a New Trial demonstrates that the plaintiff withheld relevant factual information from the court. A judgment based upon incomplete facts or factual inaccuracies is a notion that is abhorrent to the legal system. A "manifest injustice" would occur if this motion for a new trial is denied.

**ISSUES FOR CONSIDERATION**

1. Factual information withheld by plaintiff.
  - A. The Department of Agriculture Trade and Consumer Protection, here after referred to as DATCP, has agreed by the cooperative agreement with the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) to accept the superiority of Federal laws and regulations regarding premises registration.
  - B. Premises registration is part of the National Animal Identification System (NAIS).
  - C. DATCP has agreed to support NAIS implementation.

- D. Participation in NAIS is voluntary.
  - E. Defendant's can opt to not participate in NAIS if they anticipate that the costs they will incur will exceed the benefits they would receive from participation in NAIS.
  - F. Premises registration was intended by the legislature to be voluntary.
  - G. Premises registration database is maintained in Canada.
  - H. DATCP testified in a Clark county trial that premise registration is not a benefit for disease control.
2. Premises registration is a contract.
  3. Premises registration clouds title to property.
  4. The State of Wisconsin has a compelling interest in livestock health. Mandatory premises registration does not further that interest.
  5. Failure of the court to issue and file a final judgment or order denies defendant's a right of appeal.

### **Memorandum in Support of Issues for Consideration**

1. DATCP is required to accept the superiority of Federal laws and regulations regarding premises registration in the cooperative agreement with the USDA, APHIS, VS.

*"Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program."*

**Standard Form 424B (Rev. 7-97) Item 18**

The form was signed by Rod Nilsestuen, Secretary of the Wisconsin Department of Agriculture, Trade and Consumer Protection on 12/18/06 and submitted to the USDA, APHIS, VS as part of the application for a Cooperative Agreement. **Exhibit A.**

2. There can be no doubt that premises registration is directly tied to NAIS. DATCP admits that premises registration is part of NAIS in their response to Item 11 on the application for federal assistance which asks for a descriptive title of applicant's project. Their statement on the form is:

*"Funding to support NAIS Implementation"*

**Standard Form 424 (Rev.9-2003) Item 11**

The form was signed by Rod Nilsestuen, Secretary of the Wisconsin

Department of Agriculture, Trade and Consumer Protection on 12/18/06 and submitted to the USDA, APHIS, VS as part of the application for a Cooperative Agreement. **Exhibit B.**

Wisconsin instituted the mandatory state-level premises registration at issue in this case in anticipation of the USDA mandating NAIS at the federal level. The statute authorizing the DATCP to adopt the regulations at issue specifically states:

...“The department shall use a system that complies with any applicable standards established by the animal and plant health inspection service of the *federal department of agriculture*. The department shall use premises codes that are *federally allocated* for premises in this state”. **Stats. 95.51(4)(a) (emphasis added)**. Under the statute, the numbers assigned to the properties are allocated by USDA from the NAIS system.

3. The USDA has declared by rule that participation in the NAIS is voluntary and that this rule preempts all State and local laws and regulations that are in conflict with it. 95.51, Wis. Stats. conflicts with the rule and is null and void.

*“It is important to note that participation in the NAIS is voluntary.”*  
**64647 Federal Register / Vol. 69, No. 215 / Monday, November 8, 2004 / Rules and Regulations**

*“This rule:*  
*(1)Preempts all State and local laws and regulations that are in conflict with this rule;”*  
**64648 Federal Register / Vol. 69, No. 215 / Monday, November 8, 2004**

“The NAIS does not need to be mandatory to be effective; we believe the goals of the system can be achieved with a voluntary program.”  
**USDA, National Animal Identification System: A User Guide and Additional Information Resources (Dec. 2007) at p3.**

4. Defendant's anticipate that the costs they would incur with full NAIS implementation will exceed any benefits they would receive from participation in NAIS and opt to not participate.

*“Producers can opt not to participate in the NAIS if they anticipate that the costs they will incur will exceed the benefits they receive from participation.”*  
**64647 Federal Register / Vol. 69, No. 215 / Monday, November 8, 2004**

"Participants will pay the cost of the animal identification devices and any fees that may be associated with participating in an animal tracking database. The cost of animal identification methods will vary among species and will also depend on the device chosen by the animal owner, as well as whether the owner or a veterinarian applies the device. The cost will also be determined by the services that may be packaged with the device."  
**USDA, National Animal Identification System: A User Guide and Additional Information Resources (Dec. 2007) at p.iii.**

5. The USDA's published final rule did not amend or rescind in anyway the foregoing provisions from the Interim rule announcement on Monday, November 8, 2004.

*"Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule, with the changes discussed in this document."*

*"This final rule also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act."*

**39304 Federal Register / Vol. 72, No. 137 / Wednesday, July 18, 2007 / Rules and Regulations**

6. Premises registration is the first step for NAIS implementation.

"Animal health officials across the country agree that premises registration, the foundation of NAIS, is a necessary *first step* to achieving these goals."

**USDA, National Animal Identification System: A User Guide and Additional Information (Dec. 2007) at p.ii. (emphasis added).**

The USDA's NAIS program consists of three stages: (1) premises registration; (2) animal identification; and (3) animal movement tracing systems. (*Id.* at p.ii)

The first stage, premises registration, consists of assigning a random 7-digit federal number to every geographic location where animals are held. (*Id.* at p16)

In the second stage of NAIS, each animal will be assigned an internationally unique 15-digit identification number when it leaves its birth premises and physically tagged, in many cases with electronic identification such as microchips or radio frequency identification (RFID) tags. (*Id.* at p22)

The plans allow animals that are managed together from birth to death, as is done in large factory farms, to be identified with a single group identification number. (*Id.* at p23)

In the third stage, individuals would have to report specified "events," including buying or selling an animal, to a government-accessible database within 24 hours. (*Id.* at p35-36)

DATCP documents and statements confirm that Wisconsin's premises registration program is the first step of the multi-step NAIS program.

In an interview last year, Rod Nilsetuen, Secretary of the DATCP, stated that:

"It's [animal ID] going to come," and "when we get there we'll have a system in place in Wisconsin as we did when this measure pushed through five years ago,"... "We'll constantly have a universal premises ID system." ...

“The reason all of us are hear today is because we believe the future of livestock is in animal identification despite it being controversial it’s got to be a big part,” ... **Exhibit C, Sarah Watson, Wisconsin Leads the Way in Identification. Agriview, 3-17-08.**

USDA documents explain that premises registration is a prerequisite for the rest of the program because tags with NAIS animal identification numbers (AIN) can only be distributed to those who have premises registration numbers. **Exhibit D, USDA Animal Identification Fact Sheet.**

“In order to be an authorized AIN device manager, the individual or firm must agree to abide by the following:

... 2. Distribute AIN devices only to a premises or entity that has either a premises identification number (PIN) or non producer participant number (NPN) and validate the accuracy of the PIN or NPN.”

**Exhibit E, USDA Animal Identification Number (AIN) Device Manager (Nov. 30, 2006).**

Under the USDA program, the sole purpose of premises registration is to correlate individual livestock with a specific person to track all movement of that specific animal. *Id.*

DATCP has contracted with Wisconsin’s Livestock Identification Consortium (WLIC) to implement mandatory premises registration. The WLIC’s website states:

As a resource in implementing a national disease traceability system, following the standards outlined in the National Animal Identification System (NAIS), the Wisconsin Livestock Identification Consortium (WLIC) is working to integrate a system throughout all segments of the Wisconsin livestock industry. ... Building on the success of mandatory premises registration, WLIC will continue to promote and implement the next steps: voluntary animal identification and voluntary animal tracing. ... With a premises registration system already in place, the next step is to record individual animal identification and animal movements. ... Partnering with the Department of Agriculture, Trade and Consumer Protection (DATCP) and industry organizations, WLIC has created a voluntary program to implement animal identification and animal tracing.

Whether the second and third stage of NAIS, animal identification and tracking, will ever be made mandatory at the federal or state level is unknown. But it is clear the Wisconsin’s mandatory premises registration regulation is an essential part of a larger anticipated national program that includes identification and tracking.

7. Premises registration was intended by the legislature to be voluntary.

The author of the bill creating sec. 95.51 of the Wisc. Stat. stated in a letter to the DATCP board of directors that it was the intent of the legislature that premises registration be voluntary. **Exhibit F, Barbara Gronemus letter.**

The application of Wisconsin law must be consistent with the intent of the legislature.

“Construction of laws; words and phrases. In the construction of Wisconsin laws the words and phrases which follow shall be construed as indicated unless such construction would produce a result inconsistent with the *manifest intent* of the legislature.” **990.01 Wisc. Stat. (emphasis added).**

Statutes must be constructed such that the words used therein are clear, definite and knowing. At trial, the court and plaintiff were struggling for the meaning of premises which is not defined in Wisc. Stat. 95.51 and both referred to premises registration as livestock registration.

“General rule. All words and phrases shall be construed according to common and approved usage; but technical words and phrases and others that have a peculiar meaning in the law shall be construed according to such meaning.” **990.01(1) Wisc. Stat.**

Lacking a definition of premises in 95.51 Wisc. Stat., creates the erroneous conclusion, demonstrated at the trial in this case, that premises registration means livestock registration.

The DATCP has administrative authority to enforce premises registration under penalty of law and has taken the position that it may deny licenses for livestock-related businesses, such as dairying, for failing to comply with the mandatory premises registration. The DATCP has not provided for any exceptions as intended by the legislature when they created 95.51(3)(m) of the Wisc. Stat. which states:

**Exemptions.** The department may promulgate rules specifying exemptions from sub. (2), including exemptions based on the number or type of livestock kept by a person or on the type of locations where a person keeps livestock.

All livestock owners are obligated to register the premises on which they keep their livestock, whether or not they hold a license for a commercial operation or they own the premises, subject to being fined and/or incarcerated by the State. Thus, coercion under the law extends beyond simply being denied a dairy license; the law literally denies a centuries old way of life for many Wisconsin residents where dairying is their principal source of income.

The Livestock Premises Registration Law is even more insidious. Livestock owners must register the premises on which they have animals. Dr. Paul McGraw, head of the DATCP animal health division, gave an example in the Emanuel Miller Jr. case, of horse owners being obligated to assure that the

stable where they house their animals is registered. Dr. McGraw testified, that the horse owner could register the premises, even *without the permission of the property owner*. (Trans. p. 165, line 21 – p. 166, line 7; p. 188, lines 3-9, **State of Wisconsin vs Emanuel Miller Jr., Case #08CX5.**) This is not the same as a property owner recording a deed, survey or land contract, or being assigned a fire number. This law sets up situations where a person is required to register property for which he has no property interest. All livestock owners and those who own property on which livestock is kept, face a situation where their premises can be registered by others against their will, and even without their knowledge, forcing them into a system that violates their rights and profound beliefs.

8. Premises registration database is maintained in Canada.

The States claim of the premises information being confidential is unfounded. The authorizing document of the Forms Records Management Plan for Premises Registration states that, as per the USDA, the data is to be held in an Oracle database in Canada. This placement outside the country leaves the database beyond the statutory authority of the United States and any laws protecting said information. **Exhibit G Record Retention / Disposal Authority (RDA)**

9. DATCP testified in a Clark county trial that premise registration is not a benefit for disease control.

The States claim of facilitating disease control is unfounded based on testimony given by Dr. Paul McGraw head of DATCP animal health division. In which Dr. McGraw testified that no benefit has been shown in WI or any other state and that the use of the identifier number could lead to extended time in the control of disease by mistakenly entering the wrong number. Testimony also brought forth the fact that sales and market records could be used in tracing animals, a protocol that has been in place for over 50 years. **State of Wisconsin vs Emanuel Miller Jr., Case #08CX5, starting at page 199.** Dr. McGraw acquiesced by silence to a direct question posed by Judge Jon Counsell “So are addresses better than numbers?” *id*, page 205. Dr. McGraw again failed to respond to the Court’s question “Why have the number at all”.

10. Premises registration is a contract.

This Court has stated in trial that the defendant couldn’t argue administrative law in a Civil case and yet the Court used the definition of premises from Administrative code. Which is as follows “‘Premises’ means one or more locations that a person registers under a single premises code.’ Which indicates that a premises doesn’t exist until registered.

In the Statutory enactment the term premises was not defined, therefore the common definition applies. The mandate of conveyance under Premises

Registration clearly violates **Article 1, Section 14 of the Wisconsin Constitution** which states all lands within the state are declared to be allodial, and feudal tenures are prohibited.

## **Premises**

**In conveyancing.** That part of a deed which precedes the *habendum*, in which are set forth the names of the parties with their titles and additions, and which are recited such deeds, agreements, or matters of fact as are necessary to explain the reasons upon which the present transaction is founded; and it is here, also, the consideration on which it is made is set down and the certainty of the thing granted. **2 Bl. Comm. 298. Liles v Pitts, 145 La. 650, 82 So. 735, 738.**

**In estates.** Lands and tenements; an estate; land and buildings thereon; the subject-matter of a conveyance.

**F.F. Proctor Troy Properties Co. v. Dugan Store, 181 N.Y.S.786, 788, 191 App.Div. 685**

The Area of land surrounding a house, and actually or by legal construction forming one enclosure with it.

**Ratzell v. State, Okl.Cr.App.,228 P. 166, 168.**

*The term "premises" is used in common parlance to signify land, with its appurtenances; but its usual and appropriate meaning in a conveyance is the interest or estate demised or granted by the deed.*

**State v. French, 120 Ind. 229, 22 N.E. 108; Cooper v. Robinson, 302 Ill... 181, 134 N.E. 119, 120.**

*"Premises" of the employer as used in Workmen's Compensation Acts means property owned, leased, or controlled by the employer and so connected with the business in which the employee is engaged as to form a component or integral part of it. Werner v. Allegheny County, 153 Pa.Super.10, 33 A.2d 451, 453.*

**Habendum.** Lat. Portion of deed beginning with the words "To have and to hold". **Bannin v. Peck, 266 App.Div. 209, 41 N.Y.S.2d 668, 670.** The clause usually following the granting part of the premises of a deed, which defines the extent of the ownership in the thing granted to be held and enjoyed by the grantee.

**3 Washb. Real Prop. 437; New York Indians v. U.S., 170 U.S. 1, 18 S.Ct. 531, 42 L.Ed. 927; Freudenberger Oil Co. v. Simmons, 75 W.Va 337, 83 S.E. 995, 997, Ann.Cas.1918A, 873; In re Tamargo, 220 N.Y. 225, 115 N.E. 462, 464.**

*The office of the "habendum" is properly to determine what estate or interest is granted by the deed, in which case the habendum may lessen, enlarge, explain, or qualify, but not totally contradict or be repugnant to, estate granted in the premises.*

**Claridge v. Phelps, Ind.App., 105 Ind. App. 344, 11 N.E.2d 503, 504.**

**habendum clause** (h -ben-d m).

1. The part of an instrument, such as a deed or will, that defines the extent of the interest being granted and any conditions affecting the grant. The introductory words to the clause are ordinarily *to have and to hold*. -- Also termed *to-have-and-to-hold clause*. **Cases: Deeds 120. C.J.S. Deeds §§ 36, 231-236, 253-260, 262, 268,**

270-274, 276-278.

2. *Oil & gas*. The provision in an oil-and-gas lease defining how long the interest granted to the lessee will extend. Modern oil-and-gas leases typically provide for a primary term -- a fixed number of years during which the lessee has no obligation to develop the premises -- and a secondary term (for "so long thereafter as oil and gas produced") once development takes place. Most jurisdictions require production of paying quantities to keep the lease in effect. -- Also termed *term clause*.

**Cases: Mines and Minerals 73.5. C.J.S. *Mines and Minerals* §§ 241, 247, 253-254. -- Often shortened to *habendum*.**

"This part of the deed was originally used to determine the interest granted, or to lessen, enlarge, explain or qualify the premises. But it cannot perform the office of divesting the estate already vested by the deed; for it is void if it be repugnant to the estate granted. It has degenerated into a mere useless form; and the premises now contain the specification of the estate granted, and the deed becomes effectual without any habendum. If, however, the premises should be merely descriptive, and no estate mentioned, then the habendum becomes efficient to declare the intention; and it will rebut any implication arising from the silence of the premises." 4 James Kent, *Commentaries on American Law* \*468 (George Comstock ed., 11th ed. 1866).

**BLACK'S LAW DICTIONARY 728 (8th ed. 2004)**

Therefore the presumed existence of a premises falls clearly under the maxim Fictions arise from the law, and not law from fictions. This voids the owner as an heir or assign of the lawful authority granted under title fee simple.

DATCP under authority of statute to seek funding entered into a Cooperative Agreement with the USDA to implement the USDA's business plan, the National Animal Identification System. This stands as a Federal Contract and that DATCP is acting as agent for the USDA in the execution of this agreement. The forced compliance of the premises identification program stands as coercion in the execution of this agreement and stands as fraud by violation of Uniform Commercial Code. It shocks the conscience that state power is used under threat of fine and imprisonment to demand that a property owner enter a contract with the state and federal governments.

11. Premises registration clouds title to property.

"The premises registration number stays with the location; that is, a change in property ownership will not change the premises identification number."  
**DATCP website.**

Throughout the entire Draft National Animal Identification System Users Guide, land is referred to as a premises and not property. A "Premises" has no protection under the Constitution of the United States, while property always has the exclusive rights of the owner tied to it. The Fifth and Fourteenth Amendments of the Constitution protect property rights.

The word "Premise" is a synonym for the word tenement. A definition of the

word tenement in law is: Property, such as land, held by one person "leasing" it to another. Webster's New World Dictionary 1960 College Edition defines "Premises" as the part of a deed or "lease" that states its reason, the parties involved and the property in "conveyance." Webster then defines "conveyance" as the transfer of ownership of real property from one person to another. It is quite obvious that DATCP and the USDA have a very good reason to use the term "premises" and never mention "PROPERTY."

12. The State of Wisconsin has a compelling interest in livestock health. Mandatory premises registration does not further that interest.

The State has the burden to show that premises registration furthers a compelling interest, not simply some state interest, in animal health. ***State v. Kasuboski*, 87 Wis.2d 407, 416; 275 N.W.2d 101 (Wis. App. 1978).**

"A compelling interest is not just a general interest in the subject matter but the need to apply the regulation without exception to attain the purposes and objectives of the legislation." ***Yoder*, 49 Wis.2d at 438.**

In this case, the State has not placed any data into evidence to support how mandatory premises registration will further even some interest of the State in livestock health. The State witnesses in the trial of Emanuel Miller Jr., ***State of Wisconsin vs Emanuel Miller Jr., Case #08CX5***, could not explain why premises registration proved any advantages over systems already in place.

The State of Wisconsin has a compelling interest in livestock health. However, the State has failed to show in this case or in the Emanuel Miller Jr. case, that the statute at issue furthers its interest in protecting livestock health.

- A. Mandatory premises registration serves a very limited role, if any, in protecting animal health.

Understanding premises registration is important in evaluating how limited its role is in protecting animal health. Premises registration only attempts to identify properties where livestock or poultry animals are held. It does not prevent disease. It does not treat disease. It does not detect disease. It does not protect food from contamination at the slaughterhouse or during processing, nor does it trace contaminated food. Its sole claimed purpose is to facilitate traceback of live animals *after* a disease has been detected to improve containment. Dr. Paul McGraw, head of DATCP animal health division, testified in the Emanuel Miller Jr. case that "livestock premises registration gives us every location where all types of species are located so in the event of a disease outbreak, we would know rapidly who we may need to contact in order to test the livestock for disease and control the disease." **Trans. p. 143, lines 9-23, State of Wisconsin vs Emanuel Miller Jr., Case #08CX5.**

In other words, premises registration is intended to facilitate contact with animal owners during traceback of diseased animals. Wisconsin's mandatory premises registration program identifies each premises with a number

randomly generated by a computer program from the USDA. The registration includes information that can be found in public records, such as addresses and phone numbers. The number is also associated with a geographical identification system, similar to those publicly available based on a street address, survey, or GIS coordinates. The latter is routinely available through a variety of publicly accessed satellite mapping programs accessed through the World Wide Web.

- B. Mandatory premises registration does not significantly advance even traceback of livestock.

The State insists that livestock owners be forced to register their premise but is unable to articulate a single clear reason why the numbering of premises under the NAIS system is of more value than a street address. The Emanuel Miller Jr. Court asked Dr. McGraw to explain why the randomly generated premises number was “more beneficial” than using people’s names and addresses. (Trans. p.201, lines 2-3, id). Dr. McGraw was unable to provide a valid reason. Rather, he noted that “USDA came out with that program that premises registration using a unique number nationally and so the legislation was written in Wisconsin to use that system to allocate the numbers.” (Trans. p.201, lines 17-20, id). When the Court pressed again for a reason that the USDA number was better than the address, Dr. McGraw was forced to admit: “I don’t know that I can answer that.” (Trans. p.201, line 24, id).

- C. The State’s claim that it needs to know where every animal is located is unachievable even with mandatory premises registration.

The State’s claim that it needs to know where every animal is located in order to handle disease outbreaks is not realistic, and any such system will fail. The State claims that premises registration will permit rapid targeted response so that the State can avoid the expense of knocking “door-to-door.” (Trans. p. 168, lines 12-17, id). Yet the State has failed to factor in the costs of mandating premises registration, including the hardware, software, and labor involved. Moreover, if one accepts the State’s premise that it needs to know where every animal is located in order to avoid the time and expense of knocking door-to-door, the program fails. Wild animals provide a reservoir and carry many of the diseases that concern the State, such as pseudorabies in wild hogs and tuberculosis and wasting disease in wild deer. In addition, the locations where animals are held change constantly. As Dr. McGraw noted, for example, some people keep pigs only at certain times of the year for the fairs. (Trans. p. 167, lines 15-20, id). Individuals may lease pastures for a season or two, followed by other individuals who keep different animals in the same pastures. People constantly move or buy or sell animals. Thus, while the State’s identification of the premises remains constant despite change in ownership, the number and diversity of animals on that premises may change constantly.

Unless the premises registration database is updated and verified daily, it will be incomplete and inaccurate. DATCP’s regulation calls for premises

registration to be updated only every three years, and provides no mechanism or resources for verifying the information on a real-time basis. True verification could only be achieved by direct site visits to each premises.

Significantly, as the Emanuel Miller Jr. Court noted, no law has 100% compliance. There will be substantial noncompliance with any law, and even more so with a law that has sparked the sort of widespread opposition seen against NAIS. For example, when the USDA proposed mandatory NAIS premises registration for existing disease control programs, thousands of comments were submitted, overwhelmingly in opposition to the proposal. (See 74 Fed. Reg. 1634 (Jan. 13, 2009) (proposed rule).

Dr. McGraw also testified that one of the benefits of premises registration is being able to contact the individuals by phone rather than in person. (Trans. p. 167, lines 11-22, id). But, with respect to the Amish community, the individuals whose properties would be registered do not have telephones. So whether or not they registered, they would have to be contacted door-to-door.

Ultimately, if the State needs to locate or verify every property where animals are held, then it will have to resort to knocking door-to-door. In contrast, if the State needs merely to locate most of the animals in an area, this could be achieved by methods such as public service announcements, records from livestock-related businesses such as feed stores or auction barns, and the other methods that agencies have successfully used for decades.

- D. The evidence shows that mandatory premises registration may actually harm animal health.

The state has argued that the premises registration program is essential to trace disease outbreaks, including those that are the result of intentional acts, such as bioterrorism. However, State testimony indicates that the premises registration program actually would have the opposite effect and make traceability more problematic.

Consider the pseudorabies outbreak in Clark County that the State used as an example of the value of the premises registration program. The infected pig was identified at slaughter by mandatory blood tests. The specific pig was associated with a specific farm by means of the buyer and seller information contained on the tag placed on the animal by the hauler. This information was used to identify the farm of origin, and eventually an area within which all farms were contacted and pigs tested. The disease was contained.

As noted by the Emanuel Miller Jr. Court and acknowledged by Dr. McGraw, the premises ID number contains 7 digits that are randomly generated by the USDA's computer program. None of the digits are associated with a specific state, county or zip code. A series of numbers that may differ by a single digit

could be assigned to any farm anywhere in the United States.  
Trans. p. 200, line 22-p. 201, line 1; p. 202, lines 5-14, id.

The Court also noted that a single error in recording a premises ID on an auction sales form could send investigators to a different farm within Wisconsin or any other state. Dr. McGraw noted that an error would be quickly revealed. (Trans. p. 203, lines 8-12, id.) However, if the premises ID were the only number associated with the blood sample, the diseased animal would be untraceable. In contrast, existing records of names and addresses are of use even if there is an error. So does the State intend for auction barns to maintain duplicate records? If yes, then the premises registration is redundant and unnecessary. If the State does not intend for duplicate records to be kept, and instead rely on the computer-generated premises ID number, the infected animal would be untraceable if there is an error in entering, storing, or transcribing the data, or if the computer fails at a critical moment in time. In fact, concentrating a system's critical data in one central site that is reliant on computer control to make sense of otherwise random numbers makes such a system uniquely vulnerable to bioterrorism, economic manipulation, simple sabotage or random failure, weaknesses which are not typical with the redundancy and "on the ground" human inputs characteristic of current address-based and other systems.

If a person who is selling an infected animal either innocently or knowingly transposes a single digit when providing their premises identification number to the sales barn, the ID number would provide a false lead when the blood sample tested positive. The State would be forced to retrace the animal by current means, handicapped by having to take at least one additional step to return to the point of sale and trace records, if such records are even maintained once the State begins to rely on premises registration. At the very least, time would be lost in tracing the animal; at the worst, the animal could not be traced. The State's claim as to the robust nature of the program to traceback diseased animals defies logic.

Current tracking using the contact information of the buyer and seller, associated with a sales barn number that accompanies the animal's blood sample, is more accurate and less prone to error than reliance on a number randomly generated by the USDA and inserted into a national data base. Obviously, the current system worked since the diseased animal in the pseudorabies outbreak was traced to a specific farm. Despite the State using this outbreak as an example of the value of mandatory premises registration, the premises ID was not used to trace the animal. The example actually validates the effectiveness of the current less restrictive means to achieve the State's interest. Mandatory premises registration, and the entire NAIS program, appears to be a case of a bad solution looking for a problem.

Based on the State's testimony in the Emanuel Miller Jr. case, the premises registration saved the agency time locating nearby properties during the pseudorabies outbreak. Yet the State still had to go door-to-door. For the reasons outlined above, if the State truly needs to find every animal in a

specified area, they will always have to go door-to-door, with or without mandatory premises registration.

- E. The State cannot demonstrate that mandatory premises registration furthers the State interest in animal health.

There are no case studies, historical data or evidence that mandatory premises registration actually furthers the State's compelling interest in assuring the health of livestock. The State's witnesses in the Emanuel Miller Jr. case, offered only their opinions and hypotheticals. As discussed above, potential problems with mandatory premises registration puts the livestock industry at greater risk due to human error, terrorism, or economic malfeasance, by relying on a single centralized system to trace a diseased animal. Mandatory premises registration places an additional and redundant complicating layer of federal and state bureaucracy over a system of livestock tracing that currently is working. The State's claim that mandatory premises registration furthers the State's compelling interest is not defensible.

13. Failure of the court to issue and file a final judgment or order denies defendant's a right of appeal.

When Defendant's asked the clerk of the court for a copy of the final judgment or order, in the instant case, they were told that none existed because the entire case was being treated as a traffic violation.

The court has failed to comply with the statutory requirement that a final judgment or a final order of a circuit court that disposes of the entire matter in litigation as to one or more of the parties, be filed in the office of the clerk of court.

The Wisconsin statutes are very clear on this point.

808.03(1)

(1) Appeals as of right. A final judgment or a final order of a circuit court may be appealed as a matter of right to the court of appeals unless otherwise expressly provided by law. A final judgment or final order is a judgment, order or disposition that disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding, and that is one of the following:

808.03(1)(a)

(a) Entered in accordance with s. 806.06 (1) (b) or 807.11 (2).

806.06(1)(b)

(b) A judgment is entered when it is filed in the office of the clerk of court.

807.11(2)

(2) An order is entered when it is filed in the office of the clerk of court.

808.03(1)(b)

(b) Recorded in docket entries in ch. 799 cases.

808.03(1)(c)

(c) Recorded in docket entries in traffic regulation cases prosecuted in circuit court if a person convicted of a violation may be ordered to pay a forfeiture.

808.03(1)(d)

(d) Recorded in docket entries in municipal ordinance violation cases prosecuted in circuit court.

At trial, the court stated that this a "civil forfeiture action". The case at bar does not comport with 808.03(1) (b), (c), or (d). Therefore, the court must comply with s. 806.06 (1) (b) or 807.11 (2) and does not have judicial authority to do otherwise. By considering this case the same as a civil forfeiture action for a "traffic violation" the court has denied defendant's their right of appeal per 808.03(1) of the Wisconsin statutes.

The last document in litigation should indicate on its face that for purposes of appeal it is a final order or judgment and that no subsequent document is contemplated. **Radoff v. Red Owl Stores, Inc. 109 Wis. 2d 490, 326 N.W.2d 240 (1982).**

The Judicial Council Note, in the annotation for 808.03, states that "The term "traffic regulation cases" refers to only those traffic violation cases in which the penalty is a civil forfeiture."

As public servants who have taken an oath to uphold the Wisconsin constitution and laws, the district attorney, assistant district attorney, and the clerk of the circuit have committed misfeasance, by failing to inform the court of it's error.

WHEREFORE, Defendant's move this Honorable Court to:

1. Grant defendant's a new trial pursuant to 805.15(3) Wisc. Stat.
2. Grant defendant's relief from judgment or order pursuant to 806.07(1)(b) Wisc. Stat.
3. Vacate the judgment issued in the instant case.
4. Dismiss Plaintiff's complaint with prejudice for failure to state a claim upon which relief can be granted.

5. Issue an injunction against the Department of Agriculture Trade and Consumer Protection stopping any prosecution of livestock owners pursuant to 95.51, Wis. Stats. and s. ATCP 17.02, Wis. Adm. Code.
6. Rule that 95.51, Wis. Stats. and s. ATCP 17.02, Wis. Adm. Code are arbitrary and unreasonable and bear no substantial relation to the public health, safety, morals or general welfare.
7. Dismiss Plaintiff's demand for an award of costs, fees and disbursements for this action.
8. Deny such other relief as the Plaintiff may from time to time request, demand or require.
9. Allow Defendant's all of their costs, disbursements, and reasonable attorneys' fees in this matter.
  
10. Provide Defendant's such other, and further, relief, as Defendant's may show themselves entitled to same.

This \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Defendant's

---

Patrick M. Monchilovich  
 Melissa Monchilovich  
 2531 County Road E  
 Cumberland, Wisconsin 54829

**VERIFICATION**

We **are** Defendant's in the above-entitled action. We have read the foregoing document and know the contents thereof. The same is true of are own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, We believe it to be true.

We declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Cumberland, Wisconsin.

SWORN TO AND SUBSCRIBED BEFORE ME, \_\_\_\_\_, by  
 \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 2009, which  
 witnesses my hand and seal of office.

---

**NOTARY PUBLIC IN AND FOR  
THE STATE OF WISCONSIN**

*Notary Stamp*

**Certificate of Service**

2 copies filed with clerk of courts  
copy left with plaintiff's secretary